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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OLC 81-0297/f

3 MAY 1981

Ms. Tanya K. Metaksa
Legislative Director for
Senator Alfonse D'Amato
United States Senate
Washington, D.C. 20510

Dear Tanya:

FILE: Legal

Thanks for sending over the draft bill on the FOIA. My staff and the lawyers in the Agency's Legislative and General Counsel offices have studied it carefully. Unfortunately, their conclusion is that while the proposal has some intriguing aspects, it would not have the effect of solving the serious problems we currently face under the Act.

The draft bill seeks to address CIA concerns with the FOIA by strengthening existing grounds for denying release of information under sections (b)(2), (b)(6), and (b)(7) of the Act and by adding two new exemptions for CIA records. The major new exemption is for information "related to" clandestine collection, covert operations, or special activities. The bill also contains an amendment which would allow the CIA to deny an entire document if "any portion" of it is exempt from disclosure. Although a very broad interpretation of the combined effect of the major new exemption and the "any portion" provision could arguably lessen the need to search and review Operations Directorate records, the proposal does not, in our view, alleviate the requirement to search and review records in response to FOIA requests, and thus does not deal effectively with a pressing problem facing this Agency under the Act. The approximately \$3,200,000 in manpower costs for approximately 280,000 man-hours spent processing FOIA, Privacy Act and Executive Order declassification requests and in handling resulting litigation in calendar year 1980 is only one aspect of the problem. The more serious burden, which cannot be valued or remedied in terms of dollars, stems from the arcane nature of intelligence work and the decentralization and compartmentation of Agency records. This requires FOIA review to be undertaken by senior Agency officers having substantive familiarity with the material involved, and results in their frequently having to set aside far more significant intelligence responsibilities to handle FOIA matters.

Nothing less than an outright exclusion of all records created or maintained by CIA from all of the FOIA's requirements can definitively remove the burdens which we now bear, end the unproductive and debilitating diversion of resources and

critically needed skills, eliminate the growing danger of court-ordered release of properly classified information, and change the perception among cooperating foreign governments and human sources that the CIA is unable to protect the confidentiality of the information they provide. In sum, the draft bill is far less certain to solve or appreciably alleviate the Agency's problems with the FOIA than is the straightforward exclusion contained in the proposal which the DCI has forwarded to the Office of Management and Budget for Administration clearance.

Thanks again for the opportunity to comment on your proposal. We are working hard to secure Administration support for a total exclusion and we trust we can count on the Senator's support.

Sincerely,
/s/ Max Hugel

Max Hugel
Deputy Director
for
Administration

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